

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

JOHN C. DUVALL,	)	
	)	
Petitioner,	)	
vs.	)	NO. CIV-08-1388-HE
	)	
DAVID PARKER,	)	
	)	
Respondent.	)	

**ORDER**


Petitioner John Duvall filed this action under 28 U.S.C. § 2254 seeking habeas relief. Consistent with 28 U.S.C. §636(b)(1)(B), the matter was referred for initial proceedings to Magistrate Judge Robert Bacharach. The magistrate judge found that the petition is “second or successive” and recommended that certain previously asserted claims be dismissed and the remaining new claims be transferred to the Tenth Circuit Court of Appeals in accordance with 28 U.S.C. § 2244(b)(3)(A). The petitioner failed to object to the magistrate judge’s Report and Recommendation and thereby waived his right to appellate review of the issues it addressed. United States v. One Parcel of Real Property, 73 F.3d 1057, 1059-60 (10th Cir. 1996). *See* 28 U.S.C. § 636(b)(1)(C); LCvR72.1.

Accordingly, the court adopts Magistrate Judge Bacharach’s Report and Recommendation. The petitioner’s reasserted habeas claims involving ineffectiveness of counsel for failure to call Michael McCawley as a witness and failure to disclose favorable consideration given to Bobby Wainwright are dismissed. The petitioner’s new

habeas claims alleging due process and equal protection violations based on an asserted failure to disclose Brady material involving Michael McCawley and inconsistencies in the accounts given by the alleged victims, and alleging ineffective assistance of counsel for an asserted failure to investigate the first interview conducted by James Matthew Link and issues involving Mr. McCawley are transferred to the Tenth Circuit Court of Appeals.

**IT IS SO ORDERED.**

Dated this 4th day of March, 2009.



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JOE HEATON  
UNITED STATES DISTRICT JUDGE